VOL. 6 - ISSUE 1 (2025)

Journal of International Criminal Law

Online Scientific Review

EDITED BY
Heybatollah Najandimanesh
Anna Oriolo

ISSN: 2717-1914

www.jiclonline.org

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OVERVIEW

The Journal of International Criminal Law (*JICL)* is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and pubblication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
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- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and
- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about "ecocide" is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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Mis-Asylumation: Al-Assad's Sally Port to Impunity

by Yassin Abdalla Abdelkarim[*]

ABSTRACT: Since the original purpose of asylum is to provide weak persons who flee conflicts and other crises occurring in their homelands to foreign territories with protection, international law actors should strict themselves to the human accurate application of asylum rules to achieve the true humanitarian objective of asylum. However, practice discloses several examples of exploiting asylum for evil purposes, i.e., impunity. Perpetrators of gross atrocities against innocents that occur during conflicts in a country seek to enjoy the protection offered by asylum. This presents a severe crisis threatening the applicability and credibility of international law.

In this study, the phenomenon of exploiting the asylum notion by a perpetrator to seek impunity is analyzed by studying the case of outposted Syrian President Bashar Al-Assad and the Russian decision to grant him asylum status on humanitarian grounds, regardless of the judicial endeavors to prosecute him for the atrocities attributable to his regime in Syria. The research aims to point out the negative impacts of political influence on asylum decisions and how this interference promotes international impunity.

KEYWORDS**:** Asylum; Atrocities; Impunity; International Law; Syrian Civil Law.

I. Introduction

International legal practice reveals that the effective applicability of international law notions proves challenging. It is still far from achieving the true purposes of these notions. Several factors, such as politics, frustrate international law's endeavors to establish global peaceful cohabitation. Political intervention in international law application creates Sally ports[1] to evade the rule of law and to exploit its rules to achieve inhumane objectives. Therefore, this manifests a law abuse case and shapes a severe crisis threatening the credibility and trustworthiness of international law.

As a result of the modern influxes of seekers, asylum is a prominent international law notion in contemporary legal practice. It is a system aiming to provide innocents who flee their homelands because of well-founded fears caused by armed conflicts, natural catastrophes, epidemics…etc. Asylum's original role is to provide asylees with protection. It is a pivotal contribution to maintaining their humanity and dignity. Nevertheless, achieving the pure purpose of asylum requires a *bona fide* application of the relevant international law rules.

DOUBLE BLIND PEER REVIEWED ARTICLE

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[1] (In a fort or the like) A gateway permitting the passage of a large number of troops at a time, https://www.collinsdictionary.com/dictionary/english/sally-port.

JICL (Vol. 6 – Issue 1 – 2025), pp. 1-15
ISSN 2717-1914
Doi: 10.22034/jicl.2025.231980

Differently, asylum rules should be employed to protect groups who deserve protection and prevent misusing them to achieve *mala fide* purposes by persons who do not need protection. The latter category includes perpetrators of grave violations of human rights. Practices show several examples of them seeking asylum in another state to prevent being prosecuted or tried for the atrocities they are accountable for. They manage to use asylum as a Sally port to reach impunity and escape justice. As a consequence, their endeavors jeopardize the entire establishment of international law notions by creating templates of evil applications of them.

Consequently, the research aims to reveal the phenomenon of using asylum to reach impunity by studying the case of the outposted Syrian President Bashar Al-Assad who fled to Russia on 8 December 2024, where he was granted asylum, after the fall of his regime. Al-Assad is accountable for several gross human rights violations committed in Syria during the civil war. Among them torture, enforced disappearance, chemical weapons usage against civilians, and so on. Earlier, several extraterritorial prosecutions started against him but his immunity as a president deprived these judicial endeavors of efficiency. Therefore, being overthrown from the presidency, judicial endeavors to prosecute him would prove efficient. Nonetheless, his asylum in Russia frustrates this efficiency because of the judicial protection offered to him by Russia. This case constitutes a clear example of using asylum to evade justice. The research categorizes this *mala fide* practice of asylum as "mis-asylumation." The study introduced a novel concept to shed light on this practice as an independent phenomenon in international law to point out its severe impacts on the credibility and impartiality of asylum as an international law notion.

II. Asylum vs Impunity: A Contradiction

International law has emphasized the fundamentality of every human's right to seek asylum to flee suffering or persecution in his original country. Safety is the moral purpose of asylum, which achieving is stipulated by using asylum in a *bona fide* manner to prevent its exploitation. Every human is competent to enjoy this right disregarding his race, origin, religion...etc. However, because the core of seeking asylum is fleeing from home country to foreign lands, it could be used to evade domestic prosecution for severe crimes. Practice disclosed that several war criminals and perpetrators of serious human rights violations managed to seek asylum in another state to escape justice. In this case, a *prima facie* correlation between asylum and impunity appears through using asylum to realize impunity. This status deforms the true nature of asylum and its pure humanitarian purpose. Thus, the differentiation between the two concepts should be clarified clearly.

A. Asylum: A Humanitarian Approach

The aftermath of World War Two had witnessed a notable breakout of a global refugee crisis, besides the requirement to satisfy the rights included in the Universal Declaration of Human Rights (1948), invoking the urgent need to establish a firm legal structure of protection within International Law rules[2] figure out the vulnerabilities of asylum seekers that urge governments and international community actors to intervene and provide them with protection and facilitation.

[2] Isok Kim *et.al.*, *Refugees and Asylum Seekers*, in TRAUMA AND HUMAN RIGHTS (Butler, L.D., Critelli, F.M., Carello, J. eds., 2019), at 226. SUSAN FRATZKE, MEGHAN BENTON *et. al.*, THE END OF ASYLUM? EVOLVING THE PROTECTION SYSTEM TO MEET 21ST CENTURY CHALLENGES (2024).

Initially, the United Nations High Commissioner for Refugees (UNHCR) considers refugees as individuals compelled to escape their country due to persecution, conflict, or violence. Upon being recognized by the international community as refugees, they are acknowledged to possess a well-founded fear of persecution based on a certain characteristic or belonging .[3] Consequently, they are unable or unwilling to seek protection from their home country or return because of the fear of persecution. The same factors apply to asylum seekers; political persecution drives persons to flee their country to safety abroad and seek international protection.[4] Thus, they should be granted the same protection standard offered to refugees despite the legal obligation to prove their well-founded fear. According to Kim et al., the latter constitutes the mutual factor between refugees and asylum seekers, granting them a protective legal framework.[5]

Because of the universal consensus on protecting refugees and asylum seekers, a set of multilateral legal instruments has been introduced to construct the overall legal framework of this protection. The Geneva Refugee Convention (1951), along with its Protocol of 1967, is a United Nations multilateral treaty that defines who qualifies as a refugee, outlines the rights of individuals granted asylum, and specifies the responsibilities of nations that provide asylum.[6] Under this Convention, states have the duty to safeguard the fundamental human rights of their citizens. Nonetheless, when they are unable or unwilling to fulfill this duty—often due to political reasons, discrimination, conflict, violence, or other circumstances that severely disrupt public order—individuals may face such severe violations of their human rights that they are forced to leave their homes, families, and communities to seek refuge in another country, which grants refugees and asylum seekers a distinct effective protection scheme.[7] Since refugees, by definition, lack protection from their own governments, the international community intervenes to ensure their safety and protection. Countries that have signed the 1951 Convention are obligated to protect refugees within their territories and treat them according to internationally recognized standards.

In 2001, the EU introduced the Temporary Protection Directive (2001/55/EC), aimed at providing immediate, temporary protection for displaced individuals from outside the Union's external borders. This directive was intended for use in exceptional circumstances to manage a "mass influx" of refugees, requiring EU member states to accept and host refugees when invoked.[8] In the same approach, and to prevent casualties among asylum seekers, EU states began to issue humanitarian visas, which are a type of visa granted on humanitarian grounds to individuals who are in urgent need of protection. These visas allow people to legally enter and stay in an EU Member State temporarily. They are often issued to individuals facing serious threats to their lives or safety in their home country, such as those fleeing conflict or persecution.[9] Humanitarian visas are crucial for providing safe and legal pathways for those in

[3] Kim *et. al.*, *supra* note 2, at 223.
[4] UNHCR, *Asylum Seekers*, UNHCR, (Dec. 10, 2024) https://www.unhcr.org/about-unhcr/who-we-protect/asylum-seekers.
[5] Kim *et. al.*, *supra* note 2, at 229.
[6] UNHCR, *1951 Refugee Convention,* UNHCR, (Dec. 10, 2024) https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention.
[7] Nell Gabiam, *Palestinians and Europe's 'Refugee Crisis' Seeking Asylum in France in the Wake of the Syrian War,* 34(2) JOURNAL OF REFUGEE STUDIES 1327 (2021), at 1328.
[8] HELLMUT WOLLMAN, LOCAL GOVERNMENT AND GOVERNANCE IN GERMANY: CHALLENGES, RESPONSES AND PERSPECTİVES (LOCAL AND URBAN GOVERNANCE) (2024), at 110.
[9] EC, *EMN Asylum and Migration Glossary*, EC, (Dec. 10, 2024), https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/humanitarian-visa_en?form=MG0AV3.

need, helping to prevent dangerous journeys, and ensuring that individuals can access international protection. However, the issuance of these visas can vary significantly across different EU countries, regardless of being organized by the EU Code of 2009,[10] The process can be complex and challenging for applicants. For instance, certain states have narrowly defined humanitarian grounds, limiting them to medical emergencies. In contrast, others have adopted a broader interpretation that includes catastrophic situations forcing people to flee their country.[11] This complexity is manifested in the narrow scope of the application of humanitarian visas in practice since the issuing EU States adopted a discretionary and exceptional basis, and the visa availability for refugees has been very limited.[12]

Remarkably, after extensive negotiations, the European Council and the European Parliament reached an agreement in 2023 to reform the EU asylum and migration system. A key provision in the new Asylum Procedure Regulation (APR) allows for the establishment of control and processing facilities at EU borders and permits member states to reject asylum applications if the "safe third country" concept applies. The European Parliament approved the new migration rules in April 2024, and they were formally adopted by the Council of the EU in May 2024. This reform aims to ensure strong and secure external borders for the Union and to prevent any EU country from facing undue pressure alone.[13] Furthermore, to maintain the functionality of the European asylum system, EU States offered notable financial aid to refugee reception states, enhancing their ability to provide refugees and asylum seekers with appropriate humanitarian living essentials.[14] This adoption concurs with scholars' endeavors to shed light on the deteriorated situation of refugees and asylum seekers in the EU.[15]

From this brief, it could be concluded that the humanitarian objective formulates the core of national asylum systems since protecting the asylee's life and dignity is the direct privilege of granting asylum status. In this point, asylum accords with fundamental human rights conceptions, labeling it with humanitarian features.

B. Impunity: Inhumane Approach

In international criminal law, the concept of impunity refers to the exemption from punishment or accountability for perpetrators of illegal acts, particularly serious crimes such as genocide, war crimes, and crimes against humanity.[16] It means that those responsible for such crimes are not held accountable, which can undermine justice and the rule of law, erode public trust in the legal system, and perpetuate a cycle of violence and abuse. It often denies justice to victims and can hinder societal healing and reconciliation. It could be achieved through several methods such as non-prosecution, diplomatic immunity abuse, and offering state protection for the perpetrator by mis-asylumation.

Impunity and justice are intrinsically linked in the realm of international law, particularly concerning serious crimes like genocide, war crimes, and crimes against humanity. Addressing

[10] EU, Regulation (EC) No. 810/2009, Establishing a Community Code on Visas (Feb. 2, 2020), (Dec. 10, 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0810-20200202.
[11] Gabiam, *supra* note 7, at 1332.
[12] *Id*., at 1344.
[13] Wollman, *supra* note 8.
[14] EU, Regulation No. 516/2014, Establishing the Asylum, Migration and Integration Fund, Amending Council Decision 2008/381/EC And Repealing Decisions No 573/2007/EC And No 575/2007/EC Of the European Parliament and Of the Council and Council Decision 2007/435/EC, (Apr. 16, 2014).
[15] Florian Trauner, *Asylum Policy: the EU's 'Crises' and the Looming Policy Regime Failure,* 38(3) JOURNAL OF EUROPEAN INTEGRATION 311 (2016), at 317.
[16] MANSOUR TALEBPOUR, IMPUNITY AND THE INTERNATIONAL CRIMINAL COURT (ICC) (2013), at 31-32.

impunity is a fundamental aspect of achieving justice because it involves not only prosecuting and punishing offenders but also implementing measures to prevent future violations, investigate past crimes, and repair the harm caused to victims and societies. Otherwise, humanity suffers international law pointlessness that jeopardizes international justice.[17] This comprehensive approach is essential for fostering accountability, protecting human rights, and maintaining international peace and security. Since justice is integral to peace, international law should employ all its mechanisms to achieve justice universally. Justice is the moral foundation that legitimizes international law tools.[18] Therefore, international law should intervene whenever justice is at risk. The ICC assures that fighting impunity is a shared responsibility of the international community.[19] An aim that justifies its judicial intervention under the principle of complementarity.

As Cribari-Neto and Santos indicate, impunity is a complex and multifaceted phenomenon defined as the absence of punishment for legal violations and crimes.[20] It can occur at individual, institutional, or societal levels, representing the exercise of power without accountability. Impunity arises when crimes, ranging from minor offenses to serious human rights violations, are not adequately investigated, perpetrators are not convicted, and victims do not receive reparations. This not only denies justice to victims but also undermines public trust in state institutions and the rule of law, fueling the repetition of crimes and legal violations. At its worst, impunity means crimes go unpunished which leads to jeopardizing the conceptions of justice and remedy. Furthermore, impunity permeates the structures of many societies, posing a significant hurdle to the promotion of justice and equality.[21] It fosters inequality, corruption, and crime, impeding social progress and creating an environment of insecurity and injustice. This can lead to abuses of power, widespread corruption, and the denial of basic human rights. Impunity also perpetuates injustice and inequality, as those in power do not fear repercussions for their actions. In this case, impunity is used as a tool to enhance perpetrators' status for political motivations.

Moreover, they advocate the cosmopolitan feature of impunity and its impacts on countries globally, irrespective of their economic development. Varying levels of impunity across nations challenge global governance, necessitating unified legal frameworks and strong accountability mechanisms.[22] Impunity levels are influenced by socioeconomic conditions, institutional effectiveness, and cultural factors. As previously mentioned, it can erode trust in institutions, foster corruption and crime, and create an environment of insecurity and injustice.

To sum up, impunity's contradiction to the humanitarian need for justice and remedy is undeniable. Regardless of its motivation, enabling perpetrators of serious crimes to evade justice hinders the universal establishment of justice values. This consequence invoked dozens of international agreements and treaties, as indicated in detail in the International Commission of Jurists Practitioner Guide, to suppress impunity and ensure effective prosecutions of those perpetrators.

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[17] Yassin Abdalla Abdelkarim, *Prosecuting International Law: Diagnosing the International Legal Asthenia Concerning the Gaza Crisis*, 5(1) JOURNAL OF INTERNATIONAL CRIMINAL LAW 1 (2024), at 1.
[18] *Id.,* at 7.
[19] ICC, No. ICC-01/18-310-Corr, Corrigendum of Amicus Curiae Observations by the Jerusalem Institute of Justice, (Oct. 2, 2024).
[20] Francisco Cribari-Neto, Marcelo A.F.L. Santos, *An Empirical Analysis of Worldwide Impunity*, 11(1285) HUMANITIES AND SOCIAL SCIENCES COMMUNICATIONS 1 (2024), at 2.
[21] *Id.*
[22] *Id.*

III. Mis-Asylumation

The glare differentiation and contradiction between asylum and impunity imply creating a solidification of the contradiction to defend the humanitarian theme of asylum. Seeking asylum by a perpetrator to evade justice and realize impunity proves a contemporary practice in international law. This requires a logical legal explanation by introducing this practice classified under an independent concept: Mis-Asylumation.

A. Understanding the Concept

The previous preview testifies that maintaining the humanitarian status of asylum seekers is the core objective that motivates states to endorse domestic asylum policies under the umbrella of international legal instruments, i.e., the 1951 Convention. This objective provides also the natural logical justification for enhancing domestic and regional legal asylum frameworks that operate to accomplish the true mission of asylum systems.[23] The accomplishment of this objective implies honest compliance with the humanitarian end of asylum by limiting it to persons whom granting asylum status requirements apply to them lest this humanitarian approach becomes an instrument to realize *mala fide* aims, such as trafficking or evading justice. Consequently, abuse of granting asylum states deforms the pure purpose of asylum, leading to the emergence of a novel concept in international human rights law: the mis-asylumation; an innovative linguistic formulation that combines both the prefix "mis", to reflect abuse and exploitation, and the suffix "ation" to reflect the normative conception, with the word "asylum". The research introduces this concept as "intentional abuse of granting asylum status by a state in cases that contradict the humanitarian theme of asylum conception". Then, mis-asylumation consists of these pillars:

- Obvious intention to exploit asylum,
- Issuing asylum status to a person without a clear human need,
- The chief actor is a state under international law,
- Achieving a certain purpose that hinders the peaceful humanitarian purposes of asylum, *e.g.*, providing a safe haven for a war criminal.

The phenomenon of mis-asylumation is a direct consequence of the interference between asylum conception and factors that might dominate the asylum system of a given state and drive it to grant asylum status to a seeker without compliance with the humanitarian theme and purposes of asylum concept. Regardless of the mis-asylumation causation, its severity is crystalized by achieving purposes that contradict the pure requirement of peaceful global cohabitation. However, the research purpose implies limiting the study of mis-asylumation to the political factor since it is the core contributing factor to the Al-Assad case.

B. Asylum and Politics

The question of granting asylum to persons who flee persecution and other atrocities has gained a global consensus among members of the international community. Crisp argues that this consensus reflects a universal political will to suppress the agony of refugees and asylum seekers.[24] Thus, the political factor of the state's will play a crucial role in determining the

[23] Gabiam, *supra* note 7, at 1328.
[24] Jeff Crisp, *Mobilizing Political Will for Refugee Protection and Solutions: A Framework for Analysis and Action,* 1 WORLD REFUGEE COUNCIL RESEARCH PAPER SERIES 1 (2018), at 2.

state's policy regarding granting asylum status. Politics can significantly influence asylum policies and the treatment of asylum seekers. For instance, in many European countries, the introduction of policies that restrict asylum seekers' rights and benefits often coincides with upcoming elections, especially when right-wing parties are in power.[25] These policies are sometimes used as political tools to gain electoral support by appealing to voters' concerns about immigration. Thus, the tight correlation between asylum and politics is undeniable. On a broader scale, migration and asylum policies can impact global politics and security. The flow of migrants, including asylum seekers, can affect political stability and security at both national and international levels. Han claims that politics contributes the greatest to drafting asylum policies and decisions because of the powerful impacts of political frictions concerning asylum questions in a state.[26] Furthermore, the global refugee crisis affected national asylum policies by determining the approach that a state would adopt according to its national interest, which introduces a clear manifestation of politics impacts on the asylum question.[27] This aligns with Abdelkarim's arguments about the subordination of international law application to politics.[28] The political influence on international legal practice constitutes a severe double standards dilemma because exploiting international law norms, i.e., asylum, deprives victims of human rights violations of justice and remedy. The latter is a core component of international peaceful cohabitation. Thus, states have a due diligence obligation to depoliticalize the notion of asylum to ensure the accomplishment of its pure humanitarian purpose.

The purpose of deploying asylum policies reflects the powerful connection between asylum and politics. For instance, the EU employed regional asylum policies in 2023 to support Ukrainian asylum seekers within the Member States.[29] Indeed, the EU approach in this case crystallizes its political efforts to support Ukraine by relieving the crisis caused by the Russo-Ukrainian war. The report noted that several EU countries have permitted the conversion of temporary protection status into residence permits for employment or family reunification. Additionally, some countries have expanded the scope of temporary protection to include Ukrainian nationals who were already outside Ukraine when the military aggression commenced.[30] The EU's political stance against the Russian invasion is the momentum for these supportive policies for Ukraine. This justifies Segarra's critiques of the Hungarian restrictive policies concerning the reception of asylum seekers.[31] She concludes the violation of domestic policies in this state to the fundamental principles of the EU. Hungary prioritized its national interests by imposing policies that contradicted the purposes of the EU's relevant directives.[32] An inter-EU conflict floats on the surface concerning asylum, crystallizing the prominence of politics' impacts on asylum systems since the Hungarian state's interests, e.g., national security, were the sole determinants of asylum national policies.

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[25] Kyung Joon Han, *Political Use of Asylum Policies: The Effects of Partisanship and Election Timing on Government Policies Regarding Asylum Seekers' Welfare Benefits*, 11 COMPARATIVE EUROPEAN POLITICS 383 (2012), at 388.
[26] *Id.,* at 386.
[27] Omer Solodch, *Regaining Control? The Political Impact of Policy Responses to Refugee Crises*, 75(3) INTERNATIONAL ORGANIZATION 735 (2019), at 740.
[28] Abdelkarim, *supra* note 17, at 7.
[29] EUAA, Report, Annual Report on the Situation of Asylum in the European Union: Executive Summary (2024), at 8.
[30] *Id.*, at 9.
[31] Helena Segarra, *Dismantling the Reception of Asylum Seekers: Hungary's Illiberal Asylum Policies and EU Responses,* 40(1) EAST EUROPEAN POLITICS 43 (2023), at 55.
[32] Id., at 50.

The local dimension is principal to frame asylum domestic policies as a reflection of the notion of nationalism.[33] They argue that analyzing domestic asylum systems should concentrate on the local perspective of the receptionist community. States' policies on asylum seekers' reception begin from politics rising within local communities. In addition, a centric role of politics is manifested in the competence of local authorities to implement asylum policies under the overall policy of the state; a fact supporting the *prima facie* dominance of politics over asylum policies and concluding the tight correlation between them.[34]

Uysal and others point out the direct correlation between the figures of asylum seekers and the popularity of right-wing parties in the West.[35] The increase in their figures offers powerful opportunities for those parties to broaden their ground and enhance the implementation of their anti-immigrant agendas. Furthermore, the misconception of nationalism enhances the populism of the right-wing because of the prevailing portrait of asylum seekers and migrants as aliens, which might elevate domestic hostilities against them, fueling the motion of right-wing parties and offers them a justification for utilizing political violence to achieve their objectives.[36]

Therefore, politics bear massive impacts on the status of asylum seekers within a state and contribute crucially to drafting national policies of asylum along with deciding to grant asylum status to a given seeker and deny it to another. This tight nexus elevates politics to be a chief reason for mis-asylumation since the latter presents a form of political abuse of the asylum system against its natural humanitarian purposes. States' political pragmatism should not bear influence on asylum decisions.

IV. Mis-Asylumation of Impunity Regarding Al-Assad

To explore the role of mis-asylumation in enhancing international impunity concerning Syrian President Bashar Al-Assad, the research sheds light on atrocities attributed to his regime and the global endeavors to prosecute him, along with his regime officials, then exploring the Russian situation through an evaluative lens.

A. Prosecution of Al-Assad

Earlier than the official fall of Bashar Al-Assad's regime on the 8th of December 2024, human rights advocates and official prosecution authorities worldwide initiated judicial proceedings against him and other officials for heinous crimes against the Syrian people. Bashar al-Assad has been accused of numerous crimes against humanity and war crimes during his time in power. Some of the most serious allegations include: 1) Chemical Weapons Attacks: Assad's regime has been accused of using chemical weapons, including sarin and chlorine gas, against civilians. Notable attacks include the 2013 Ghouta attack, which killed over 1,400 people.[37] 2)

[33] Lorenzo Vianelli, Birte Nienaber, *Unpacking the Local in the Study of the Reception of Asylum Seekers: The Case of Luxembourg,* 114(3) GEOGRAPHICAL REVIEW 378 (2024), at 380-381.
[34] *Id.,* at 382.
[35] Mete Sefa Uysal *et. al.*, *Populism Predicts Sympathy for Attacks Against Asylum Seekers Through National Pride and Moral Justification of Political Violence,* 15(1) SOCİAL PSYCHOLOGICAL AND PERSONALITY SCIENCE 70 (2024), at 71-72.
[36] *Id.,* at 74-75.
[37] Doniyor Mutalov, *Note To Syrian Rebels: Give Up Assad's Chemical Weapons And Prosecute Those Who Used Them,* BULLETIN OF THE ATOMIC SCIENTISTS, (Dec. 25, 2024) https://thebulletin.org/2024/12/note-to-syrian-rebels-give-up-assads-chemical-weapons-and-prosecute-those-who-used-them/?form=MG0AV3.

Extrajudicial Killings: The regime has been implicated in the killing of at least 202,000 civilians, including children and women.[38] 3) Torture and Enforced Disappearances: Thousands of individuals have reportedly died under torture, and many more have been forcibly disappeared.[39] 4) Mass Graves: The discovery of mass graves has shed light on the scale of the regime's brutality, with countless bodies found in unmarked graves.[40] 5) Sieges and Starvation: Assad's forces have been accused of besieging cities, leading to severe shortages of food and medicine, and causing deaths from starvation.[41] The severity of those atrocities motivated states and human rights advocates to initiate prosecutions against Al-Assad and his regime officials. To achieve the study purpose, a limitation to Bashar Al-Assad's prosecution efforts is imposed as he manifests a direct application of mis-asylumation.

Nonetheless, the international community failed to initiate an official prosecution process against Bashar Al-Assad through international courts, even those that were established to achieve world criminal justice, e.g., the International Criminal Court and the International Court of Justice. The European Center for Constitutional and Human Rights (ECCHR) reported that the Rome Statute, adopted in 2002, established the International Criminal Court (ICC) to prosecute war crimes, crimes against humanity, and genocide, deprived the ICC of the authority to investigate crimes in Syria because Syria is not a party to the Rome Statute, and, also, a UN Security Council referral is blocked by Russia and China several times since the break out of the civil war in March 2011.[42] Thus, unilateral prosecution efforts started by human rights centers and activities. For instance, the Human Rights Council created the Independent International Commission of Inquiry on the Syrian Arab Republic (UN CoI Syria) to investigate human rights violations in Syria simultaneously with atrocities occurrence, leading to the initiation of prosecutions and trials before domestic European courts.

France was the first jurisdiction to prosecute Syrian president Bashar Al-Assad as in November 2023 a French court issued an arrest warrant against him for war crimes and crimes against humanity committed by his regime in Syria.[43] A decision that was supported by the Paris appeals court to ensure that diplomatic immunity should never offer perpetrators of heinous crimes an approach to impunity. Under the arrest warrant, Al-Assad can be detained and brought to France for questioning as the investigation into the 2013 attacks in Eastern Ghouta and Douma continues, according to lawyers. Although Assad is unlikely to face trial in France, international warrants for a sitting world leader are extremely rare and send a strong message about Al-Assad's leadership, especially at a time when some countries have re-engaged with him diplomatically.

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[38] Syrian Network for Human Rights, *Summary of the Assad Regime's Crimes Against the Syrian People Over the Last 14 Years*, SYRIAN NETWORK FOR HUMAN RIGHTS, (Dec. 20, 2024) Shttps://snhr.org/blog/2024/12/20/summary-of-the-assad-regimes-crimes-against-the-syrian-people-over-the-last-14-years/?form=MG0AV3.

[39] *Id*.

[40] Simona Foltyn, Dan Sagalayn, *Discovery of mass graves in Syria sheds new light on brutality of fallen Assad regime*, PBS NEWS, (Dec. 25, 2024) https://www.pbs.org/newshour/show/discovery-of-mass-graves-in-syria-sheds-new-light-on-brutality-of-the-fallen-assad-regime?form=MG0AV3.

[41] Juan Carlos Sanz, *Survivors of the Douma ghetto: 'Syria will not forget the crimes of Bashar al-Assad'*, EL PAIS (Dec. 25, 2024) https://english.elpais.com/international/2024-12-19/survivors-of-the-douma-ghetto-syria-will-not-forget-the-crimes-of-bashar-al-assad.html?form=MG0AV3.

[42] ECCHR, Survivors of Assad's torture regime demand justice – German Authorities Issue First International Arrest Warrant, ECCHR, https://www.ecchr.eu/fileadmin/Q_As/QA_Syria_Torture_Complaints_Germany_2019August.pdf.

[43] France 24, *French Court Upholds Arrest Warrant for Syria's Assad,* FRANCE 24 (Dec. 25, 2024) https://www.france24.com/en/france/20240626-french-court-upholds-arrest-warrant-for-syria-s-assad.

On 8 December 2024, the world witnessed the fall of Bashar al-Assad's regime in Syria, following a major offensive by opposition forces. The offensive, spearheaded by Hayat Tahrir al-Sham (HTS) and supported by Turkish-backed factions, led to the capture of Damascus and the collapse of pro-government forces. Assad fled to Russia, where he was granted asylum along with his family.[44] This marked the end of over 50 years of Assad family rule, which began with Hafez al-Assad in 1971. The swift collapse of the regime was a significant blow to its allies, Russia and Iran, and has reshaped regional dynamics.

B. Russia's Duty to Prosecute Al-Assad

It is acknowledged that international human rights law (IHL) imposes two main categories of obligations on the state: (i) a duty to respect human rights and (ii) a duty to guarantee these rights.[45] The duty to guarantee encompasses the state's responsibilities to prevent human rights violations, investigate them, prosecute and punish the perpetrators, and repair the damages caused.[46] Consequently, the state assumes the role of a guarantor of human rights, with fundamental obligations to protect and safeguard these rights. The obligatory nature of this duty elevates it to be a *jus cogen* in international law. Under international law, states are obligated to prosecute and punish perpetrators of gross human rights violations, crimes against humanity, genocide, and war crimes through their national criminal courts and refrain from providing them a safe haven, which prevents justice. This obligation is not solely based on treaties; its recognition has a long history in international law.[47] One of the earliest case law precedents is the arbitral award issued on 1 May 1925, regarding British claims for damages caused to British subjects in the Spanish zone of Morocco.

Domestic courts have primary jurisdiction over crimes against humanity under the Rome Statute for the International Criminal Court, with the International Criminal Court having an ancillary role in the prosecution of these crimes.[48] As previously established, the lack of ICC jurisdiction in Al-Assad case imposes an obligation on Russian courts to prosecute him because his residence moved to Russia and started living within their direct jurisdiction. Thus, there is a natural obligation on Russia to prosecute Al-Assad. Rodman identifies the global "duty to prosecute" as the assertion by advocates of international criminal justice that the global community has a moral and legal responsibility to investigate and punish the most severe human rights abuses following war or oppressive regimes.[49] Despite its universalism, national courts hold great responsibility to implement this duty, which derives its legitimacy from being rooted in international criminal and human rights law.[50] Key legal sources include the 1948 Genocide Convention, the 1949 Geneva Conventions, the 1984 Convention on Torture, and the 1998 Rome Statute.[51] These laws mandate prosecution or extradition for serious crimes and have delegitimized amnesty for such violations. Customary international law solidifies this duty

[44] https://www.nytimes.com/live/2024/12/08/world/syria-war-damascus, accessed on 26 December 2024.
[45] ICJ, Guide, International Law and the Fight Against Impunity: A Practitioners' Guide No. 7 (2019), at 89.
[46] *Id.*, at 92.
[47] *Id.*, at 389.
[48] Ruairi Maguire, *Prosecuting Crimes Against Humanity: Complementarity, Victims' Rights and Domestic Courts,* 17 CRIMINAL LAW AND PHILOSOPHY 669 (2023), at 673.
[49] Kenneth A. Rodman, *Duty to Prosecute*, in ENCYCLOPEDIA OF GLOBAL JUSTICE (Deen K. Chatterjee ed., 2011), at 284.
[50] *Id*., at 285.
[51] *Id.*

as indicated in the rules of the International Committee of the Red Cross (ICRC)[52] because states' practices established a complete legal structure of the duty to prosecute. This duty challenges the legitimacy of amnesty and non-retributive forms of transitional justice for those who commit such crimes. Granting asylum status by Russia to Al-Assad, who is accountable for severe crimes committed in Syria, contradicts Russia's duty to prosecute war criminals since it is widely accepted that individuals suspected of committing war crimes are not eligible for refugee or asylum status. This principle is supported by the Convention on the Status of Refugees and state practices.[53] In 1994, the UN Security Council emphasized that those involved in serious breaches of international humanitarian law cannot escape prosecution by fleeing their country, and the refugee convention does not apply to them. The UN General Assembly has also supported the exclusion of suspected war criminals from asylum in various resolutions and declarations.[54]

C. Al-Assad Mis-Asylumation by Russia

On 11 December 2024, Moscow declared granting Bashar Al-Assad asylum status for humanitarian reasons.[55] Granting asylum status to a war criminal supports impunity for several reasons. First, it enables the prevail of the lack of accountability; when war criminals are granted asylum, they are shielded from facing prosecution for their crimes. This lack of accountability allows them to escape justice and continue living without consequences for their actions. Second, this decision undermines justice because it conveys a message that those who commit serious violations of international law can avoid punishment by seeking refuge in another country. This undermines the efforts of the international community to uphold justice and deter future crimes and manifests a strong influence of politics on asylum. Moreover, it encourages future human rights violations by allowing war criminals to evade prosecution. It creates a precedent that others may follow, believing they too can escape punishment. This can lead to a cycle of impunity and continued human rights abuses. Last, granting serious crime suspects asylum status violates victims' rights as it disregards the rights of victims to see justice served and denies them the opportunity for closure and reparation, perpetuating their suffering. Therefore, granting asylum to war criminals not only undermines the rule of law but also perpetuates a culture of impunity, allowing perpetrators to evade justice and potentially encouraging future violations of human rights. These consequences incentivize a global consensus on prohibiting perpetrators of heinous crimes from asylum privileges.

The Russian decision to grant Bashar Al-Assad asylum status manifests a complete application of mis-asylumation according to the conception previously explained for these reasons:

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[52] ICTY, Rule 158, Prosecution of War Crimes (Nov. 1993), "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.", (Dec. 29, 2024), https://ihl-databases.icrc.org/en/customary-ihl/v1/rule158.

[53] UN, Convention Relating to the Status of Refugees, No. 2851 (July 28, 1951), Article 1(F)(a). See, e.g., Australia, Defence Force Manual (cited in Volume II, Chapter. 44, at 636); Netherlands, Council of State, Administrative Law Division, Ahmed Case (*ibid.*, at 638); United States, Court of Appeals, Demjanjuk Case (*ibid.*, at 639); the reported practice of Netherlands (*ibid.*, at 640) and United States (*ibid.*, at 641).

[54] EU, *supra* note 14.

[55] The Gulf Observer News, *Bashar al-Assad Granted Asylum in Russia Amid Syria's Political Upheaval,* THE GULF, (Dec. 26, 2024), https://thegulfobserver.com/bashar-al-assad-granted-asylum-in-russia-amid-syrias-political-upheaval/.

- Al-Assad is accountable for several grave crimes committed against the Syrians during the civil war, e.g., torture, extrajudicial killings, chemical attacks on civilians, enforced disappearance...etc.[56] Upon the fall of his regime, he fled to Russia seeking asylum which he was immediately granted to evade prosecution. His intent to benefit from the humanitarian ends of asylum contradicts the original purpose of asylum. This constitutes an obvious *mala fide* "exploitation" of asylum.
- Furthermore, granting Al-Assad asylum status "does not stand on humanitarian grounds"; the asylee is accountable for several human rights violations and should be prosecuted and brought to justice. This fact deprives the Russian decision of its legally reasonable grounds, but it frustrates any endeavors aimed at achieving justice.
- Russia is the "state" that granted him asylum.
- It goes without saying that the chief purpose of granting Al-Assad asylum status in Russia is to offer him political protection against prosecution and trials, which "hinders international justice". This is an entirely inhumane consequence because it enroots impunity and threatens global peaceful cohabitation. Furthermore, it deprives asylum of its original humanitarian objectives and violates basic human rights.

Thus, the inability to prosecute Al-Assad for severe human rights violations occurred in Syria since the outbreak of the civil war in 2011 until he resigned in 2024. It cannot be admitted that granting Al-Assad asylum status in Russia is grounded only on humanitarian foundations because of the clear political motivations for this decision; Russia desires to protect its ally against justice. Therefore, one can conclude that the Russian decision constitutes a clear abuse of the fundamental right to seek asylum or, in other words, mis-asylumation.

V. The Non-Refoulment Dilemma

Article 33(1) of the 1951 Convention includes a principle that prevents states to which refugee and asylum seekers arrive from forcing them to return to their homeland where they fled severe threats and persecution. This is the principle of non-refoulment.

A. What is Non-Refoulment Dilemma

The Office of the High Commissioner of Human Rights (OHCHR) decides that the principle of non-refoulement is a fundamental protection under international human rights, refugee, humanitarian, and customary law. It prevents states from transferring or removing individuals from their jurisdiction or control if there are substantial grounds to believe that the person would face irreparable harm upon return, such as persecution, torture, ill-treatment, or other serious human rights violations.[57] This principle is explicitly included in various international and regional instruments, such as the Convention against Torture (CAT), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. International human

[56] EC, *supra* note 9.
[57] OHCHR, The *Principle Of Non-Refoulement Under International Human Rights Law,* OHCHR, (Dec. 31, 2024) https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf, accessed on 31 December 2024.

rights bodies, regional human rights courts, and national courts have recognized this principle as an implicit guarantee flowing from the obligations to respect, protect, and fulfill human rights. Human rights treaty bodies, including the Committee Against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, and the Committee on the Rights of the Child, regularly receive individual petitions concerning non-refoulement.

In the context of asylum seeker protection, the principle of non-refoulement offers complementary protection, which prevents the transfer of a person to a territory where they would face the risk of serious harm.[58] This legal norm presents an essential legal right for refugees and asylum seekers despite being originally rooted in international human rights law rather than the Refugee Convention of 1951. It applies to a broader scope of individuals seeking asylum, regardless of their specific status, e.g., race, religion, nationality, membership in a particular social group, or political opinion, extending beyond the categories covered by the Refugee Convention of 1951. The prominence of non-refoulment was enrooted in customary international law through several court rulings. For instance, the Inter-American Court of Human Rights (IACtHR) considered this principle a fundamental pillar of refugee and asylum seekers' protection.[59]

The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status, if there are substantial grounds to believe that the returnee would face irreparable harm upon return, such as torture, ill-treatment, or other serious human rights violations. This principle is absolute and without exception, making it broader in scope than international refugee law. It applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and wherever a state exercises jurisdiction or effective control, even outside its territory.[60]

Courts and international human rights mechanisms have interpreted this prohibition to cover a range of serious human rights violations, including torture, cruel, inhuman, or degrading treatment, denial of a fair trial, risks to life, integrity, or freedom, serious sexual and gender-based violence, death penalty or death row, female genital mutilation, and prolonged solitary confinement. Additionally, severe violations of economic, social, and cultural rights, such as degrading living conditions, lack of medical treatment, or mental illness, have been found to prevent the return of persons.[61] Yatani and others argue that the principle of non-refoulement constitutes a key aspect of international refugee law, designed to prevent the return or expulsion of individuals to places where their lives or freedom would be at risk.[62] Protecting refugees and fulfilling states' obligations to provide asylum are crucial for safeguarding human rights and promoting humanitarian values.

As concluded, the broad scope and flexible applicability, along with its obligatory nature, of the principle of non-refoulment facilitates seeking asylum for wide sectors of refugees. These features might ease exploiting asylum by perpetrators to evade justice. The principle of non-refoulement applies whenever there is a genuine risk of persecution or serious harm based on various grounds, such as race, religion, nationality, membership in a particular social group, or

[58] Gabiam, *supra* note 7, at 1329.
[59] IACtHR, Opinion No. 25/2009 (Nov. 15, 2009), (Dec. 31, 2024) https://www.corteidh.or.cr/docs/opiniones/seriea_25_esp.pdf, accessed on 31 December 2024.
[60] UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Jan. 26, 2007), at 2.
[61] IACtHR, *supra* note 60.
[62] Vincent Godana Yatani *et. al., Exclusion of the Principle of Non-Refoulement in Article 33 Paragraph 2 of the 1951 Refuge Convention*, 1(1) EX AEQUO ET BONO JOURNAL OF LAW 53 (2023), at 54.

political opinion. These grounds are broadly defined to encompass a wide range of circumstances that may place individuals at risk. Then, a question appears concerning the applicability of the non-refoulment on perpetrators of severe crimes, i.e., Bashar Al-Assad.

B. Non-Refoulment in Al-Assad Case

Being a guarantee that enhances the protection offered to asylum seekers and refugees, Articles 1F and 33(2) of the 1951 Convention impose exclusions from the principle of non-refoulment and the entire Convention protection. According to Yatani and others, there are exceptions to the principle of non-refoulment based on national security and public order.[63] Nevertheless, these exceptions should be applied sparingly and in line with international legal standards. They indicate that Article 33(2) of the Refugee Convention allows for exceptions to the principle of non-refoulement under specific circumstances. These exceptions include legitimate concerns about a refugee's impact on national security or if the refugee has been convicted of a grave criminal offense, e.g., crimes against humanity and war crimes.[64] However, the consistent interpretation of the exclusion clause is challenging because different states may have varying interpretations, leading to inconsistent decisions and outcomes.[65] Hence, promoting consistent interpretation through dialogue, training, and the exchange of best practices among states can contribute to greater predictability and fairness in implementing the exclusion provisions.

Jöbstl explains these exclusions by the global need to maintain peace and security, implying that perpetrators of severe crimes should never enjoy the protection offered by the Convention and the principle of non-refoulment.[66] Requirements of achieving justice and remedy for victims besides eradicating international impunity justify refusing to grant asylum status to those perpetrators and impose an obligation on the state they flee to refouler them to their country to enable the domestic jurisdiction to initiate prosecutions against them. In addition, the prohibition of returning asylum seekers to their homeland, where their safety is endangered, does not apply to those grave criminals who deprived innocents of their safety.[67] The guilt is severe, and justice requirements imply prioritizing prosecuting those criminals, regardless of the non-refoulment fundamentality. Realizing justice and remedy for atrocities victims is concrete to maintaining public order as included in Article 33(2) of the 1951 Convention.

Accordingly, upon the arrival of Bashar Al-Assad to the Russian territory, domestic authorities should have complied with the duty to prosecute under international law. Al-Assad is accountable for grave human rights violations against innocent Syrian citizens and fleeing from Syria to Russia once his regime has fallen never constitutes a well-founded fear of danger according to the 1951 Convention. Fearing justice is not a well-founded fear. It is a Sally port to reach impunity and evade justice. Furthermore, the political motivation for Russia to grant Al-Assad asylum status presents an obvious example of the negative impacts on justice when politics rule over the decision to initiate judicial procedures, which proves how mis-asylumation enhances international impunity.

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[63] *Id.*
[64] *Id.,* at 55.
[65] *Id.*, at 58.
[66] Hannes Jöbstl, *An Unforeseen Pandora's Box? Absolute Non-Refoulement Obligations under Article 5 of the ILC Draft Articles on Crimes Against Humanity,* EJIL: TALK! BLOG OF THE EUROPEAN JOURNAL OF INTERNATIONAL LAW (May. 20, 2019), https://www.ejiltalk.org/an-unforeseen-pandoras-box-absolute-non-refoulement-obligations-under-article-5-of-the-ilc-draft-articles-on-crimes-against-humanity/.
[67] Yatani *et al.*, *supra* note 63, at 58.

VI. Conclusion

While asylum passed through several stages in the history of international law to be structured as a human approach to spare lives, certain groups managed to exploit the protection offered by asylum, for political motivations, to evade justice. This practice is enrooted in international politics and bears severe legal consequences on international justice. Since the latter is enhanced by the persisting indiscriminative application of laws, granting certain privileges that enable a given person to evade justice hinders global trust in the concept of justice. Furthermore, the exploitation of a human system to achieve impunity is a direct result of the dominance of political factors over legal questions. Through studying the Russian decision to grant Bashar Al-Assad asylum status, the research points out how this political decision negatively affects justice by providing a perpetrator a Sally port to reach impunity and escape justice. This methodology introduced a novel concept in international law, mis-asylumation, to profile non-legitimate granting asylum status to perpetrators for political reasons. The description of this prevailing practice by the novel concept of mis-asylumation suits the severity of enhancing impunity through human systems' abuse. It should be highlighted that eradicating mis-asylumation is urgent to maintain the credibility and trustworthiness of international justice. This could be achieved by isolating politics from the law by ensuring that applying international law notions, such as asylum, depends solely on legal grounds and is not influenced by political objectives.

Competing Interests: The author declares that there are no competing interests, financial or non-financial, regarding this manuscript.
Funding: The authore received no funding for this work.